IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

	)	2 CA-JV 2006-0059
	)	DEPARTMENT B
	)	
IN RE CHAD M.	)	MEMORANDUM DECISION
	)	Not for Publication
	)	Rule 28, Rules of Civil
	)	Appellate Procedure

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. 16363701

Honorable Elizabeth Peasley-Fimbres, Judge Pro Tempore

AFFIRMED

Robert J. Hooker, Pima County Public Defender
By Eva K. Bacal
Tucson
Attorneys for Minor

E S P I N O S A, Judge.

¶1 This appeal follows the juvenile court's orders adjudicating appellant Chad M. delinquent on a second delinquency petition and the disposition of that matter as well as the disposition following a probation revocation proceeding relating to probation he was serving following an initial delinquency adjudication. Counsel has filed a brief in compliance with *Anders v. California*, 386 U.S. 738, 87 S. Ct. 1396 (1967), and *In re Maricopa County Juvenile Action No. JV-117258*, 163 Ariz. 484, 788 P.2d 1235 (App.

1989), stating "she has reviewed the entire record and, although finding meritorious issues to raise on appeal, has been unable to find a meritorious remedy this Court can impose." *See also Smith v. Robbins*, 528 U.S. 259, 120 S. Ct. 746 (2000); *State v. Leon*, 104 Ariz. 297, 451 P.2d 878 (1969); *State v. Clark*, 196 Ariz. 530, 2 P.3d 89 (App. 1999). Counsel asks this court to review the record for fundamental error.

¶2 Chad was adjudicated delinquent in June 2005 after admitting he had committed third-degree burglary and attempted theft, two of five offenses alleged in an April 2005 delinquency petition. The juvenile court placed him on probation for nine months. After Chad admitted allegations in a subsequent petition to revoke probation, the court found in early June 2006 he had violated his probation conditions. Later that month, the state filed a second delinquency petition, charging Chad with two counts of aggravated assault. While that petition was pending, the state filed a second petition to revoke probation; again, Chad admitted, and the juvenile court found, he had violated the conditions of probation as alleged. Thereafter, pursuant to an agreement, Chad admitted he had committed facilitation of aggravated assault causing serious physical injury, count one of the June 2006 delinquency petition as amended. The juvenile court adjudicated Chad delinquent, and on October 19, combining the dispositions on the petition to revoke probation and the delinquency petition, the court continued Chad on probation until his eighteenth birthday, which was just weeks away, and ordered that, at that time, he would be

unsuccessfully terminated from probation. The court further ordered that Chad be detained until October 31 and that he pay restitution in the amount of $15,767.37.

¶3 Counsel asks this court to consider as an arguable issue whether the juvenile court abused its discretion in determining the disposition on the June 2006 delinquency petition by essentially punishing Chad for refusing to name the other juveniles who had been involved in the attack on the victim. Counsel argues Chad had the right to remain silent, even in the admission proceeding, guaranteed by the Fifth Amendment to the United States Constitution and article II, §§ 3, 4, and 10 of the Arizona Constitution, and the court violated that right by impermissibly drawing negative inferences from his silence. Counsel also argues that, again having been influenced by Chad's refusal to name the participants, the court ordered probation was to be terminated as unsuccessful and ordered that Chad be detained for the two weeks remaining until his eighteenth birthday, depriving him of the opportunity to work during this period to earn money that he could have used to try to pay restitution to the victim. Counsel further suggests the juvenile court relied on "unsubstantiated, unreliable hearsay allegations" in determining the disposition. As an "arguable remedy" for these alleged errors, counsel suggests that this court "reverse the juvenile court's unsuccessful termination of Chad's probation and suspend the designation of Chad's probation termination until he has paid restitution."

¶4 We note at the outset that "[a] juvenile court has broad discretion in determining the proper disposition of a delinquent juvenile, *In re Maricopa County Juvenile*

Action No. JV-510312, 183 Ariz. 116, 901 P.2d 464 (App. 1995), and we will not disturb a disposition order absent an abuse of the court's discretion. *In re Maricopa County Juvenile Action No. JV-512016*, 186 Ariz. 414, 923 P.2d 880 (App. 1996)." *In re Themika M.*, 206 Ariz. 553, ¶ 5, 81 P.3d 344, 345 (App. 2003). The court did not abuse its discretion here.

¶5 We have considered counsel's suggestion that Chad's right to remain silent guaranteed by the federal and state constitutions was violated. The argument is waived because Chad did not raise it below. Nor did the juvenile court commit fundamental, prejudicial error. *See State v. Henderson*, 210 Ariz. 561, ¶¶ 19-20, 115 P.3d 601, 607 (2005) (failure to object in trial court waives all but fundamental, prejudicial error). Although the juvenile court commented that it was "very sad that [Chad] . . . refused to reveal the names of the co-defendants," this was among a number of things the court stated it was considering in determining the appropriate disposition. The disposition related not just to the adjudication on the June 2006 delinquency petition, but also to the initial delinquency adjudication and the second of two petitions to revoke probation imposed for the latter adjudication. The court expressly noted it was considering Chad's behavior since he was first placed on probation, among a variety of other factors.

¶6 The court's comment about Chad's refusal to name the persons he had essentially solicited to beat the victim was made within the context of the court's lamentation that none of them would be required to share in the payment of restitution to

the victim and his family. That, the court noted, would have made it more likely the victim and his family would be "fully compensated" for the significant medical expenses incurred as a result of the serious injuries the victim had sustained. The court lamented, too, that the others would go unpunished. But the record belies counsel's suggestion that the court punished Chad for not providing the information. Thus, even assuming, without deciding, that Chad's federal or state constitutional right to silence could have been implicated here, we see no error that can be characterized as both fundamental and prejudicial.[1]

¶7 We also reject counsel's suggestion that the juvenile court relied on "unsubstantiated, unreliable hearsay allegations" and that the error is reversible. Although the court mentioned at the disposition hearing that the disposition report contained concerns Chad was "perhaps relapsing with drugs," one of his guardians immediately denied Chad had such a problem. And counsel interjected, "May I point out the report also says those

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[1]The privilege against compulsory self-incrimination is implicated when there is a reasonable danger of incrimination. *Hoffman v. United States*, 341 U.S. 479, 486, 71 S. Ct. 814, 819 (1951); *see also Schmerber v. California*, 384 U.S. 757, 761, 86 S. Ct. 1826, 1830 (1966) (privilege protects accused "only from being compelled to testify against himself, or otherwise provide the State with evidence of a testimonial or communicative nature"); *State v. Carvajal*, 147 Ariz. 307, 310, 709 P.2d 1366, 1370 (App. 1985) ("The right against self-incrimination extends to all proceedings, civil or criminal, when the answer to a question put to a witness may tend to incriminate him in future criminal proceedings."). We recognize the entry of an admission does not waive the privilege, but Chad had already admitted facts sufficient to establish a factual basis for the offense of facilitation of aggravated assault. *See Mitchell v. United States*, 526 U.S. 314, 321, 119 S. Ct. 1307, 1311 (1999) (rejecting contentions that either petitioner's guilty plea or her statements at the plea colloquy functioned as waiver of right to remain silent at sentencing). But we doubt naming the individuals Chad had facilitated was any more incriminatory than the statements he had already made at the violation hearing.

concerns were not substantiated. There were concerns, but there was no issue when he was arrested." The court responded, "I understand that. I have read the report." The court then said that what really concerned it was Chad's failure to comply with the conditions of probation in the past and the fact that he had committed the new offense while on probation, which resulted in the second delinquency adjudication. The court also considered the serious physical harm to the victim and the financial impact on his family, which was substantiated by what the court clearly considered compelling testimony of the victim's mother. The allegations in the disposition report counsel complains about did not play a significant role in the court's decision. Any error was of little or no consequence.

¶8 Finally, Chad's probationary term could only last until November 4, 2006, his eighteenth birthday, which was about two weeks after the disposition hearing. *See* A.R.S. § 8-341(B) (if juvenile is placed on probation, "period of probation may continue until the juvenile's eighteenth birthday"). The court had the authority to continue Chad on probation for that brief period, detain him, in essence, as a condition of probation, and label the automatic termination of probation unsuccessful. *See Themika M.*, 206 Ariz. 553, ¶ 7, 81 P.3d at 345 (concluding that juvenile court had authority to terminate delinquent minor's probation as unsuccessful). The juvenile court's disposition alternatives were limited; there was no reasonable prospect that during those two weeks Chad could earn enough money to pay restitution. As the court noted at the disposition hearing, it had little time left before Chad's birthday to supervise him and see to it that the victim's parents were paid. *See* Ariz.

Const., art. VI, § 15 ("The jurisdiction and authority of the courts of this state in all proceedings and matters affecting juveniles shall be as provided by the legislature or the people by initiative or referendum."); A.R.S. § 8-202(A), (G) (juvenile court has original jurisdiction of delinquency proceedings until child reaches eighteen years of age).

¶9 We reject, as we did in *Themika M.*, counsel's suggestion that this court reverse the characterization of Chad's probation as unsuccessful. Counsel points out, as did Themika, the consequences of such a characterization include the fact that Chad will not be able to have the delinquency adjudications set aside pursuant to A.R.S. § 8-348 or his juvenile records destroyed pursuant to A.R.S. § 8-349. But, as we said in *Themika*, Chad "will incur those consequences as the result of [his] failure to abide by the conditions of [his] probation, not as a result of the juvenile court's essentially stating the obvious by accurately describing [his] performance on probation as unsuccessful." 206 Ariz. 553, ¶ 15, 81 P.3d at 347.

¶10 We have reviewed the entire record for fundamental error. We have found none and therefore affirm the delinquency adjudication and the disposition orders.

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PHILIP G. ESPINOSA, Judge

CONCURRING:

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PETER J. ECKERSTROM, Presiding Judge

J. WILLIAM BRAMMER, JR., Judge